

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 23, 2010
POSITION: Oppose

BILL NUMBER: SB 1365
AUTHOR: E. Corbett

BILL SUMMARY: Public Safety: Consumer Products

This bill would add the Department of Toxic Substances Control (DTSC) to the agencies required to enforce the prohibition of the manufacture, sale, or exchange of any toy that is contaminated with any toxic substance.

This bill would provide that when a penalty is imposed by any one of the enforcement agencies (Department of Public Health (DPH), DTSC, or local health departments), the other two shall not also impose a penalty for the same incidence of violation.

FISCAL SUMMARY

This bill would have no additional fiscal impact to DPH. However, although estimates of the total cost are not available at this time, DTSC's costs may be significant. Any additional cost incurred by DTSC would be funded by the Toxic Substances Control Account (TSCA). While TSCA is currently projected in the Governor's Budget to have a fund balance of \$36 million, annual budgeted expenditures exceed revenues by \$11 million in 2010-11.

COMMENTS

The Department of Finance is opposed to this bill for the following reasons:

- This bill would create additional cost pressure on the TSCA.
- This bill does not provide clear enforcement authority for DTSC.
- This bill may create "regulatory confusion" as more than one state agency has enforcement authority.

This bill does not include a mechanism for additional revenue and any new costs would be borne by the TSCA. The DTSC currently does not have the personnel or the administrative procedures to effectively absorb additional enforcement activities including the enforcement of toy safety standards. This bill would necessitate resources to, at a minimum, respond to complaints received, conduct surveys, assemble evidence packages and supporting facts, and refer cases to the local prosecutor or the Attorney General's Office.

This bill would authorize the DTSC to enforce the provisions of Article 2, Chapter 5, Part 3, of Division 104 of the Health and Safety Code without referencing an enforcement authority. Although DTSC has more extensive enforcement authority in other sections of the Health and Safety Code, the department does not have enforcement authority in this area of the Code. The enforcement provisions for toy safety would limit violations to a misdemeanor with a fine not to exceed \$1,000. These provisions are not consistent with DTSC's enforcement authority in Chapter 6.5, of Division 20 of the Health and Safety Code for lead in jewelry or toxics in packaging.

Analyst/Principal (0522) B. Nunes	Date	Program Budget Manager Lisa Ann L. Mangat	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

E. Corbett

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SB 1365

An indirect legal impact from the bill would be the creation of overlapping authority between the DTSC and the DPH. This may lead to the use of "regulatory confusion" as a defense to enforcement cases in which more than one state agency has authority.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2010-2011	FC	2011-2012	FC	2012-2013	Code
4265/PublicHealth	SO	No	-----	No/Minor Fiscal Impact				-----	0080
3960/ToxicSubCtrl	SO	No	-----	See Fiscal Summary				-----	0557

<u>Fund Code</u>	<u>Title</u>
0080	Childhood Lead Poisoning Prevention Fund
0557	Toxic Substances Control Account